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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,175	01/17/2001	Michael Z. VanErdewyk	2000-0755.ORI	7036

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EXAMINER
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BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1744

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DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/764,175

Applicant(s)

VANERDEWYK, MICHAEL Z.

Examiner

William H. Beisner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-16 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Curren (GB 2 124 864).

The reference of Curren discloses a container which is made of a heat sealable tea-bag paper which has a grading between 21-27.5 grams per square meter (See page 1, lines 31-55).

The instant claims recite a container which is a sealed pouch made of a porous material wherein the pores are sized and configured to allow microorganisms to pass through the pores at a rate of no more than 0.5 g/day/cm<sup>2</sup> when said pouch is exposed to a stationary fluid environment.

While the text of the specification is silent as to the size of the pores, the thickness of the porous material and/or the porosity of the material, the specification discloses that a porous material which meets the required rate of releasing microorganisms (claims 1-3) is a 26-gram heat sealed fibrous paper (See page 5, lines 10-25). The reference of Curren meets the instant claim limitations because it discloses a paper weight of 27.5 grams which is greater than 26 grams and would provide a rate which is less than that associated with a 26 gram paper and would inherently meet the instant claim limitations. While the preamble of the claim recites that the device is intended to be used to release microorganisms, the body of the claim merely recites a

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“tea-bag” container made of a 26-gram heat sealed fibrous paper. The reference of Curreen discloses a container of the same structure which meets the instant claim language.

With respect to claim 4, the paper is inherently capable of being biodegraded. If not, the material would not require reinforcing as discussed on page 1, lines 35-37.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 7-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curreen (GB 2 124 864).

The reference of Curreen has been discussed above.

The above claims differ by reciting that the dispensing container is contained within a dispensing vessel.

The reference of Curreen discloses that while the container is suitable for a fishhook, the container can be used in a crayfish pot (dispensing vessel).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to employ the holding container of Curreen in a pot as suggested by Curreen for the known and expected result of providing an alternative means recognized in the art for achieving the same result, contacting the holding container with respect to a liquid environment.

The reference as modified above meets the claim limitations of claims 8 and 9 for the same reasons as set forth in the 102(b) rejection above.

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With respect to claims 10 and 16, crab or crayfish pots (cages) include open channels and sink to the bottom of body of water in which they are deployed.

5. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curren (GB 2 124 864) in view of Sasaki et al.(US 4,630,634).

The reference of Curren has been discussed above.

The above claims differ by reciting that the dispensing vessel includes a top-floating portion which is threadably attached to the dispensing vessel.

The reference of Sasaki et al. discloses a known device for positioning a dispensing vessel in a liquid environment with a floating portion threadably attached to the dispensing portion of the device (See Figure 1).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the device of Curren within a floating device as suggested by Sasaki et al. for the known and expected result of providing an alternative means recognized in the art to achieve the same result, positioning a dispensing device in a liquid environment. The floating vessel could be used in a specific location of a body of water as a means to attract fish to the specific area in which the floating holder is maintained. The material of construction of the dispensing structure would have been obvious based on considerations such as materials which are cheap to manufacture and resistance to the environment to which it will be exposed.

With respect to claim 14, the contents of the bait holder of Curren can be considered nutrients as recited in claim 14 in the absence of further positively recited language to further define nutrients.

***Allowable Subject Matter***

6. Claims 17 and 18 are allowed.

7. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

With respect to both claims 6 and 17, while the prior art of record teaches and/or suggests a container made of a porous material which is capable of dispensing microorganisms at the claimed rate, the prior art of record fails to teach or fairly suggest employing a container of the claimed construction in combination with microorganisms and nutrients whereby the microorganisms may be cultured within the container and controllably released into the fluid environment..

***Response to Arguments***

9. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
William H. Beisner  
Primary Examiner  
Art Unit 1744

WHB  
March 24, 2003